ST 00-30
Tax Type: Sales Tax
Issue: Pollution Control Equipment (Exemption)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

THE DEPARTMENT OF REVENUE	**)**	
OF THE STATE OF ILLINOIS	**)**	
	)	**Docket No. 97-ST-0000**
v.	**)**	**IBT # 0000-0000**
	)	**NTL #00-000000000000000**
ABC COAL COMPANY	**)**	**NTL #00-000000000000000**
	)	**NTL #00-000000000000000**
Taxpayer	**)**	

RECOMMENDATION FOR DISPOSITION

Appearances: Charles Hickman, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Jeffrey M. Naeger of ABC Coal Company and Thomas H. Donohoe of McDermott, Will & Emery for ABC Coal Company.

Synopsis:

The Department of Revenue ("Department") conducted an audit of ABC Coal Company[1] ("taxpayer") for the time periods of January 1, 1993 to November 30, 1993, December 1, 1993 to June 30, 1995, and July 1, 1995 to June 30, 1998. The Department concluded that the taxpayer owed additional tax on various items and issued three Notices of Tax Liability (NTLs), which were timely protested by the taxpayer.[2] A hearing was held during which the taxpayer raised the following issues: (1) whether

[1] The parent company is XYZ Holding Company.
[2] The NTL for the last audit period, July 1995 to June 1998, was issued after the hearing was held in this matter. Because the issues raised in that audit are the same issues raised in this case, the parties agreed to include that NTL in this case.

chemicals used in the taxpayer's coal washing facilities qualify for the pollution control facilities exemption; (2) whether compactors are exempt as either coal mining equipment or pollution control facilities; (3) whether mantrips are exempt as coal mining equipment; and (4) whether the purchase of flight bars and rack bars may be aggregated for purposes of meeting the $250 threshold for the coal mining equipment exemption. After reviewing the record, it is recommended that this matter be resolved partially in favor of the taxpayer and partially in favor of the Department.

FINDINGS OF FACT:

1. The taxpayer is in the business of mining and marketing coal. The taxpayer generally sells coal to utility companies. (Tr. p. 37)

2. When coal is removed from the ground, it contains certain incombustible rock, such as limestone or sandstone. (Tr. p. 71)

3. Coal also contains ash and sulfur, which are pollutants that are generated when coal is burned. (Tr. pp. 41-43)

4. The taxpayer currently uses two levels of preparation on its coal before it is sold. Level one is known as "dry preparation" and level two is known as "wet preparation." (Tr. pp. 45, 49)

5. Level one, or dry preparation, consists of (1) screening, where large particles of rock are segregated, and (2) crushing, where the largest particle becomes no bigger than two inches in size. (Tr. pp. 38, 46)

6. During the dry preparation phase, the coal goes through a device known as a rotary breaker. (Tr. pp. 45, 125)

7. The rotary breaker sizes and screens the coal in order to remove incombustible rock from the coal. It lifts the coal and rock and drops it so that the softer coal breaks off from the rock. The coal falls through a screen onto a conveyer where it goes for further processing. The rock is moved to a waste ("gob") pile. (Tr. pp. 45-46)

8. The coal that is left after the dry preparation is known as "run of mine" coal. (Tr. p. 46)

9. The run of mine coal that the taxpayer mines in Illinois has a high level of ash and sulfur content. Run of mine coal from other states has less ash and sulfur. (Tr. pp. 47-48)

10. The run of mine coal from Illinois also has a higher heating value, which is measured in British Thermal Units (BTUs). The utility companies prefer coal with higher BTUs. (Tr. pp. 40-41)

11. The second level of coal preparation is known as "wet preparation," which generally involves washing and cleaning the run of mine coal to remove ash and sulfur. (Tr. pp. 53, 119)

12. Upon exiting the rotary breaker, the coal is separated into one of three categories, based upon size. The three categories are (1) coarse, (2) intermediate, and (3) fine. (Taxpayer Ex. #18, Tr. pp. 127, 128, 130)

13. Coarse coal is typically defined as anything that is greater than 3/8 of an inch in size. Intermediate coal includes material that is between 1/16 and 3/8 of an inch. Fine coal includes anything that is smaller than 1/16 of an inch. (Tr. pp. 127, 128, 130)

14. In order to clean intermediate coal, a chemical (magnetite) is added to water so that the reaction causes the coal to float while the refuse, such as rock and sulfur, sinks to the bottom. (Tr. pp. 49-51, 128-129)

15. Fine coal is cleaned through a process called flotation, which requires the addition of a chemical, a reagent, to a tub of water and fine coal. The reagent causes foam to form on top of the water, and the foam attracts the lighter coal. The heavier refuse material sinks to the bottom of the tub. The foam is skimmed from the top of the water and then other chemicals are added to reduce the time required for the fine coal to settle. (Tr. pp. 130-133)

16. The coal washing process allows the taxpayer to reduce the ash content by 48%, reduce the sulfur by 23%, and reduce the sulfur dioxide by 35%. In addition, the coal washing process increases the BTUs of the coal. (Tr. pp. 59, 124)

17. The Illinois Environmental Protection Agency (IEPA) has certified the taxpayer's coal preparation facilities as pollution control facilities. (Dept. Ex. #2, 3)

18. In the past, the taxpayer generally sold run of mine coal to its customers. (Tr. pp. 38, 46-47)

19. Since the federal government passed the Clean Air Act in 1970, utility companies must meet certain requirements to abate air pollution. (Tr. pp. 37-38, 48)

20. Because utility companies have to meet certain pollution standards, they are demanding coal with less ash and sulfur, i.e., cleaner coal. As a result, the taxpayer's run of mine coal is no longer merchantable. (Taxpayer Ex. #4, #5, Tr. p. 48)

21. Economics is the primary stimulus behind the taxpayer's advanced coal cleaning process. (Tr. p. 79)

22. Although the cleaner coal is a more valuable product because it has less pollutants and higher BTUs, since the installation of the coal washing plant the taxpayer has had a lower net profit. (Taxpayer Ex. #6, Tr. pp. 59-62, 77)

23. In addition to burning cleaner coal, another way to meet the new pollution standards is for the utility to install post-combustion pollution control devices such as scrubbers and precipitators. These capture the smokestack's incombustible items after the coal is burned and are expensive to install. (Tr. p. 40, 53, 80)

24. The washing of intermediate and fine coal results in the waste product called "slurry," which consists of small pieces of waste in a water suspension. It is discharged from the preparation plant into a large impoundment structure known as a slurry cell. (Taxpayer Ex. #12, 15, Tr. pp. 93, 107)

25. The refuse from coarse coal is generally referred to as "gob." (Taxpayer Ex. #13, Tr. pp. 106-107)

26. Approximately 20% to 25% of the material that is removed from the mines is refuse. The coal cannot be sold without the removal of the refuse. (Tr. pp. 96, 109)

27. Gob and slurry contain various pollutants. (Tr. p. 97)

28. The taxpayer compacts the gob and uses it to add on to slurry impoundment cells to increase their capacity. (Tr. p. 93)

29. By compacting the gob and using it to elevate the dikes of the slurry cells, the taxpayer avoids the need to purchase additional land to contain the slurry. (Tr. p. 108)

30. Gob is compacted either through the use of a bulldozer or through the use of a large vehicle called a compactor. A compactor is needed to build the dams and dikes that

are extensions of the slurry cells. A bulldozer is used to compact the refuse piles. (Taxpayer Ex. #11, Tr. pp. 97-98)

31. Compactors typically weigh between 30 and 40 tons. The wheels of the compactor are designed with cleats. The length and size of the cleats determine how much pressure the compactor can impart as it traverses the area of the refuse. The compactor alters the landscape by pushing down with the cleats into the material that it traverses. (Taxpayer Ex. #11, Tr. pp. 98-100)

32. The taxpayer uses the compactors mostly to raise the elevation of the slurry impoundment or levy walls; it also uses them to compact the gob piles. (Tr. p. 112)

33. Federal and state agencies regulate the containment of slurry and gob. The agencies are concerned with the stability of the impoundments and minimizing the amount of material that potentially could leak through the impoundment walls. Also, the gob must be compacted to remove oxygen in order to prevent spontaneous combustion. (Tr. pp. 116-118)

34. The federal Mine Safety and Health Administration (MSHA) periodically inspects the impoundment cells. (Tr. pp. 101-102)

35. In order to access the coal, which lies several hundred feet beneath the earth's surface, the taxpayer installs mine shafts and elevators that are used to transport workers and materials from the earth's surface into the coal mine. (Tr. pp. 88, 104)

36. The "working face" of the mine is the location at which the workers and machines are actually working to remove coal from the earth. As coal is mined, the working face moves further away from the mine shaft and elevator. In many instances,

the working face is several miles from the base of the mine shaft and elevator. (Tr. pp. 86-87)

37. In the past, workers and materials were transported from the bottom of the elevator to the working face by rail. (Tr. p. 86)

38. Over the years, through improvements in the design of vehicles and the legalization of the use of diesel-powered engines in the mine, diesel-powered vehicles have replaced the rail. (Tr. p. 86)

39. The taxpayer now uses diesel-powered vehicles known as "mantrips" to transport workers and small materials such as hand tools to the working face of the mine. (Taxpayer Ex. #8, #9, Tr. pp. 86, 103)

40. The mantrips are unlicensed vehicles. (Tr. p. 85)

41. The coal miners are paid from the time they are lowered from the portal into the mine until the time they come out of the portal. (Tr. pp. 87-88)

42. The parties stipulated that the facts concerning the purchase of flight bars and rack bars in the case of Old Ben Coal Company v. Department of Revenue, No. 1-98-1683 (1st Dist., April 29, 1999) shall be considered to be the facts in this proceeding. (Stip. #3)

43. The taxpayer was audited for the time periods of January 1, 1993 to November 30, 1993, December 1, 1993 to June 30, 1995, and July 1, 1995 to June 30, 1998. At the conclusion of the audit, the auditor prepared corrected tax returns for additional tax owed. For the first audit period, the return shows total tax due, including penalties, in the amount of $58,365. The corrected return for the second audit period shows a total tax liability of $184,560, including penalties. For the third audit period, the

corrected return shows a total amount due of $78,788, including penalties. The corrected returns were admitted into evidence under the certificate of the Director of the Department. (Dept. Group Ex. #1)

CONCLUSIONS OF LAW:

The Use Tax Act (UTA) (35 ILCS 105/1 *et seq.*) imposes a tax upon the privilege of using in Illinois tangible personal property purchased at retail from a retailer. 35 ILCS 105/3. Section 12 of the UTA incorporates by reference section 4 of the Retailers' Occupation Tax Act (35 ILCS 120/1 *et seq.*), which provides that the corrected return issued by the Department is *prima facie* correct and is *prima facie* evidence of the correctness of the amount of tax due, as shown therein. 35 ILCS 105/12; 120/4.

Once the Department has established its *prima facie* case by submitting a certified copy of the corrected return into evidence, the burden shifts to the taxpayer to overcome this presumption of validity. Clark Oil & Refining Corp. v. Johnson, 154 Ill.App.3d 773, 783 (1st Dist. 1987). To prove its case, a taxpayer must present more than its testimony denying the Department's assessment. Sprague v. Johnson, 195 Ill.App.3d 798, 804 (4th Dist. 1990). The taxpayer must present sufficient documentary evidence to support its claim for an exemption. Id.

It is well-settled that tax exemption provisions are strictly construed in favor of taxation. Heller v. Fergus Ford, Inc., 59 Ill.2d 576, 579 (1975). The party claiming the exemption has the burden of clearly proving that it is entitled to the exemption, and all doubts are resolved in favor of taxation. Id.

Chemicals

The taxpayer first argues that the chemicals used in its coal washing plants qualify for the pollution control facilities exemption pursuant to section 2a of the UTA, which provides in part as follows:

> "'Pollution control facilities' means any system, method, construction, device or appliance appurtenant thereto sold or used or intended for the primary purpose of eliminating, preventing, or reducing air and water pollution as the term 'air pollution' or 'water pollution' is defined in the 'Environmental Protection Act', *** or for the primary purpose of treating, pre-treating, modifying or disposing of any potential solid, liquid or gaseous pollutant which, if released without such treatment, pre-treatment, modification or disposal might be harmful, detrimental or offensive to human, plant or animal life, or to property." (emphasis added) (35 ILCS 105/2a.)

The "primary purpose" test under section 2a seeks to determine the function and ultimate objective of the equipment alleged to be exempt. Central Illinois Public Service Co. v. Department of Revenue, 158 Ill.App.3d 763, 768 (4th Dist. 1987). "Only those facilities directly involved in the pollution abatement process are to be afforded special tax status." Id. It is important to note that the primary purpose test does not involve a "but for" analysis; in other words, determining the primary purpose does not involve considering the fact that the equipment would not have been purchased but for the need to comply with environmental regulations. Id.

The taxpayer contends that the coal washing plant is a pollution control facility because its primary purpose is to pre-treat coal to reduce air pollution. The taxpayer states that the Illinois Environmental Protection Agency (IEPA) certified the coal washing plant as a pollution control facility, and this entitles the taxpayer to an exemption. (See Central Illinois Light Co. (CILCO) v. Department of Revenue, 117 Ill.App.3d 911 (3rd Dist. 1983)). In addition, nothing in the evidence supports a finding

that the certificates were issued in error. If the coal preparation plant is a pollution control facility, then the chemicals used in the process qualify for the exemption. (See Wesko Plating, Inc. v. Department of Revenue, 222 Ill.App.3d 422 (1st Dist. 1991) (chemicals used in a pollution control system qualify for the exemption))

The Department first calls into question the certification by the IEPA. The Department states that the certification process should not be relied upon because it is based solely on the representations made by the taxpayer on its IEPA application; no further investigation is done. The Department argues that the preparation plants, and therefore the chemicals, are not entitled to an exemption because the primary purpose of the coal washing facilities is to make the taxpayer's product more desirable to its customers. Without the preparation facilities, customers would buy cleaner coal from other states. The Department notes that the preparation plants, but not the chemicals, are exempt under the coal mining equipment exemption. The Department therefore claims that the primary purpose of this equipment is to refine a raw material into a more valuable product, and the reduction of pollution is incidental.

In furtherance of its position, the taxpayer relies on the CILCO case. This reliance misplaced. The CILCO court found that a facility that is certified by the EPA pursuant to section 21a-5 of the Revenue Act of 1939 shall be treated as a pollution control facility for tax purposes. CILCO at 914. The court relied on a portion of section 21a-5, which states that certification by the EPA as a pollution control facility "shall require tax treatment as a pollution control facility in conformity with the State's taxing provisions providing for such treatment." The court found that the word "provisions" required an interpretation that the tax treatment referred to was for various taxes, i.e., the

use tax as well as the property tax. Id. Section 21a-5 has been replaced by section 11-25 of the Property Tax Code, and this current provision does not contain the same language relied upon by the CILCO court. (See 35 ILCS 200/11-25) Because the law that the court relied on has changed, the CILCO case is not applicable.

Illinois courts have led the nation in determining whether the primary purpose of equipment is pollution control by developing the functional analysis approach.[3] Under this approach, the focus is on the actual function of the equipment. See Central Illinois Public Service Co. v. Department of Revenue, 158 Ill.App.3d 763, 768 (4th Dist. 1987) (primary purpose test seeks to determine function and ultimate objective of equipment). As previously stated, Illinois has specifically rejected the "but for" or "subjective intent" analysis, which focuses on the reasons why the company acquired the equipment. Id.

One of the landmark cases in developing the functional analysis is Illinois Cereal Mills v. Department of Revenue, 37 Ill.App.3d 379 (4th Dist. 1976). In that case, the taxpayer purchased gas-fired boilers to replace coal-fired boilers used at its corn processing mill, and the court found that even though the new boilers were less polluting than the ones formerly used, their primary purpose was to produce heat. The boilers were therefore not entitled to the exemption. The court stated that the words of the pollution control statute seem to refer to "equipment such as precipitators, filters, and smoke stacks which have no substantial function in the manufacturing or processing of a product other than to abate the pollution caused by the plant operation." Illinois Cereal Mills at 381-82. The court also noted that the legislative intent is "to encourage expenditures that would

[3] Holtz and Heitzmann, "Primary Purpose" Pollution Control Tax Incentives: Is the Public Getting What It Is Paying For?, 31 Land & Water L. Rev. 401, 405 (1996)

result in environmental improvement and to soften the burden on those who are required to make such expenditures." Id. at 382.

The functional analysis was applied in the following cases to reach the conclusion that the primary purpose of the items at issue was not the abatement of pollution: XL Disposal Corporation, Inc. v. Zehnder, 304 Ill.App.3d 202 (4th Dist. 1999) (primary purpose of vehicles was to collect and haul garbage); Central Illinois Public Service Co. v. Department of Revenue, 158 Ill.App.3d 763 (4th Dist. 1987) (primary purpose of railway cars was to facilitate transportation); Shell Oil Co. v. Department of Revenue, 117 Ill.App.3d 1049 (4th Dist. 1983) (primary purpose of storage tanks and revisions of refinery fuel system was to produce asphalt).

Legal analysts have concluded that the functional analysis approach used by the Illinois courts is the best approach to adopt when analyzing these issues. See Holtz and Heitzmann, "Primary Purpose" Pollution Control Tax Incentives: Is the Public Getting What It Is Paying For?, 31 Land & Water L. Rev. 401, 410 (1996) The same commentators have also concluded that a different analysis should apply to cases where the equipment at issue creates a product or service that reduces the pollution of the final consumer rather than the pollution created in the production process. These commentators characterize this situation as a "merger" situation because the business purpose of making a marketable product and the pollution control purpose of reducing the pollution of the consumer merge into one. Id. at 411.

In a merger situation, the purpose of the equipment is to yield a less-polluting product or service for the final consumer. Because the overriding purpose of a business is to make a profit, commentators have concluded that in merger situations a court can

reasonably presume that the pollution control purpose is secondary to the primary purpose of making a profit. Id. at 412. In addition, it is unlikely that lawmakers intended to subsidize the cost of producing a product when they enacted the pollution control exemptions. Id. at 424. This analysis has been adopted by at least two courts that have considered the issue. See Laramie County Board of Equalization v. Wyoming State Board of Equalization, 915 P.2d 1184 (1996) (equipment used to produce low sulfur diesel fuel not exempt because it is necessary to produce a marketable final product); Chemical Waste Management, Inc. v. State of Alabama, 512 So.2d 115 (1987) (equipment used in hazardous waste management business not exempt because it is the very property from which the taxpayer's profits are derived; the legislature did not intend to subsidize the waste management business).

The coal washing equipment at issue in this case is the type of equipment that falls under the merger category. The coal washing equipment serves a dual purpose. On the one hand, it reduces the ash and sulfur content of the coal so that when the utility companies burn the coal, it is less-polluting than the previous run of mine coal. On the other hand, the washing facilities are essential to producing a marketable product. It is important to note that the washing equipment does not reduce any pollution created by the taxpayer's production process; it only reduces the pollution of the purchaser of the product.

Keeping in mind that tax exemption provisions are strictly construed in favor of taxation, because there are two purposes to the equipment at issue, the business purpose must override the pollution control purpose. Although the washing equipment reduces the pollutants in the coal, it is also the very equipment that is necessary for the taxpayer

to produce a marketable product. The utility companies will not purchase the taxpayer's coal unless it is washed because the utility companies want a product that is less-polluting than run of mine coal without themselves incurring the expense of the equipment at issue. Even though the taxpayer's profit may be less than it was when the taxpayer sold run of mine coal, the taxpayer is still profiting from the use of the coal washing equipment. It must be concluded that the primary purpose of the equipment is to produce a marketable final product and the secondary purpose is pollution control.

This conclusion is supported by the legislative intent behind the pollution control exemption. The principal rule of statutory construction is to ascertain and give effect to the intention of the legislature. Board of Trustees of Southern Illinois University v. Department of Human Rights, 159 Ill.2d 206, 211 (1994). As previously stated, the legislative intent was addressed in Illinois Cereal Mills. The court stated that the statute seems to refer to equipment that abates the pollution caused by the plant operation. This, in fact, has been the case in every situation addressed by Illinois courts (i.e., the actual polluter was the entity that received the exemption and even then, in some cases the exemption was not allowed based upon the primary purpose standard).

The coal washing facilities do not operate to abate pollution caused by the taxpayer's operations. The taxpayer is not required to spend money for the equipment in order to reduce its pollution. Rather, the equipment is purchased in order for the taxpayer to produce a marketable product. The legislature did not intend, with this exemption, to subsidize the taxpayer's business by allowing an exemption for equipment necessary to operate its business.[4] Such a result would provide a windfall to corporations and require

[4] As previously noted, the taxpayer's coal washing equipment already qualifies for the coal mining equipment exemption, which was intended to subsidize the taxpayer's business. The pollution control

taxpaying citizens to cover the cost of a company that wishes to produce a more appealing product. By disallowing the exemption, the taxpayer is simply required to pay taxes on equipment that it needs anyway to sell its product to the widest market. The profits derived from its customers are enough incentive for the taxpayer to operate the coal washing facilities.

The taxpayer contends that a distinction should not be made on the basis that the taxpayer is not the party emitting the pollution. The taxpayer argues that the coal washing equipment would be exempt if it were operated at the utility company rather than the mine. Although this may be true, the primary purpose of the equipment is different when it is operated by the taxpayer. When the taxpayer operates the equipment, it is to improve its product. When used by the customer, the sole purpose of the equipment is to abate the pollution the customer creates. Because the purpose of the equipment is to both maintain the taxpayer's revenue and reduce pollution when ultimately used by the taxpayer's customer, the business purpose overrides the pollution control purpose. Considering the fact that exemption provisions are strictly construed in favor of taxation, this is the result that must be reached in this case. The chemicals are therefore not entitled to the exemption.

Compactors

Next, the taxpayer argues that the compactors qualify for either the coal mining equipment exemption or the pollution control facilities exemption. The coal mining

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exemption, however, was intended to soften the burden on those required to make such expenditures. The taxpayer is not mandated to use the equipment to reduce its pollution; the equipment is necessary only because it allows the taxpayer to sell its product. This is not the type of equipment that was intended to fall under the pollution control exemption.

equipment exemption is contained in section 3-5 of the UTA and provides that the following is exempt from use tax:

> "Coal exploration, mining, offhighway hauling, processing, maintenance, and reclamation equipment costing $250 or more, including replacement parts and equipment costing $250 or more, and including equipment purchased for lease, but excluding motor vehicles required to be registered under the Illinois Vehicle Code." (35 ILCS 105/3-5(16))

The Department's regulation includes the following as one of the activities that does not fall under the exemption:

> "The use of equipment in the construction, reconstruction, alteration, remodeling, servicing, repairing, maintenance or improvement of real estate. *** (86 Ill.Admin.Code, ch. 1, §130.350(c)(1))

The Department notes that the compactors are used to elevate the dams of the slurry impoundments, and this is done to avoid the need to purchase additional land for more impoundments. The Department states that the use of the compactors to raise the levies is either an "alteration" or "improvement" of real estate, and therefore they do not qualify for the coal mining exemption.

The taxpayer relies on the following provision of the Department's regulation, which is listed under "Exempt Activities":

> "Coal is produced in an underground mining operation that begins with the boring of a shaft from the surface to the coal deposit to be mined, continues with the removal of waste material and the extraction of coal, continues further with the transportation from the coal seam to the processing facility, continues further with the installation of roof supports and the coating of walls with rock dust to prevent mine explosions and collapse, continues further with the processing of coal and <u>disposal of waste material from the mine and processing facility</u>, and ends with the stockpiling of coal to allow moisture to drain and evaporate from the washed coal." (emphasis added) 86 Ill.Admin.Code, ch. 1, §130.350(b)(2)

The taxpayer states that the compactors are exempt because they are used exclusively to aid the disposal of waste. The taxpayer argues that compactors are used only to compact the coarse refuse and maintain the slurry impoundment cells, which is far different from the construction activities that comprise the improvement or alteration of real estate. The taxpayer claims that the gob pile and slurry cells serve no other purpose than the containment of the mine's waste products and therefore the compactors should be exempt as coal mining equipment.

The evidence does not support a finding that the compactors qualify for the coal mining equipment exemption. As previously stated, exemption provisions are strictly construed, and any doubts are resolved in favor of taxation. The evidence indicates that the compactors alter the real estate, rather than dispose of waste. The testimony of one of the taxpayer's witnesses supports this conclusion. Mr. Doe, a vice-president and general manager of the taxpayer, stated that the compactor "alters the landscape by pushing down with the cleats into the material it's traversing." (Tr. p. 100) The machines are used to compact the gob, which also raises the elevation of the impoundment walls. This is effectively a change to the real estate. Although the impoundment cells contain the waste, the compactors do not perform functions that actually dispose of the waste. For these reasons, they do not qualify as coal mining equipment.

The compactors also do not fall under the pollution control facilities exemption. The focus of this exemption is the primary purpose of the equipment. The ultimate function of the machines is to compress the gob and use it to add on to the slurry impoundment cells. Any pollution control is secondary to this primary purpose.

Mantrips

The taxpayer argues that the mantrips should be exempt as coal mining equipment. The Department's regulation provides that the following equipment is exempt:

> "(H) Equipment installed as improvements to real estate in underground mining such as elevators, rail, ventilating and illuminating systems.
>
> (I) Additions to exempt underground rail conveyors, ventilating and illumination systems due to the progression of mining will be considered as exempt, as long as the addition is valued at $250.00 or more." 86 Ill.Admin.Code, ch. 1, §130.350(b)(2)(H) and (I)

Under these sections, elevators, rail systems, and additions to underground rail conveyors due to the progression of mining are exempt. The taxpayer notes that under these two sections, equipment used to transport men and materials from the earth's surface to the mine's working face are exempt. The taxpayer argues that the statute was intended to apply to equipment used in all phases of the mining process. It was intended to give broad relief from taxes as an incentive to investment in mining activities.

The taxpayer argues that the transportation of the miners from the elevators to the mine face is absolutely essential to the mining process. Miners are paid from the time that they enter the mine until the time they exit. The taxpayer claims that the mine simply could not operate if the miners had to walk from the elevators to the mine face. The mantrips are analogous to elevators and rail systems, which are exempt. Because the movement of the miners is central to the mining process, it is logical to exclude the mantrips from taxation.

The Department argues that although mantrips are necessary to the mining operation, they do not function directly in the coal extraction and are not exempt. The Department states that "mining" is listed in the statute as one of six types of operations that are exempt, and this means that "mining" has a limited definition, which does not extend to all operations of a coal mining business.

The taxpayer's arguments are persuasive. Nothing in the statute limits the "mining" exemption to items that function directly in the coal extraction process. As the taxpayer correctly states, the Department's regulation actually allows the exemption for the analogous items of elevators and rail systems. The mantrips are not analogous to any of the items listed under nonexempt activities. The movement of the miners and various small materials such as hand tools is a necessary part of the mining process. As the taxpayer states, it would not be logical to allow the exemption for the other equipment that transports the workers and materials but not allow it for the mantrips, which perform the same functions. Therefore, they are entitled to an exemption.

Flight Bars and Rack Bars

The final issue concerns whether the purchase of flight bars and rack bars qualifies for the coal mining exemption. The parties agreed that the facts concerning flight and rack bars in the case of Old Ben Coal v. Department of Revenue, No. 1-98-1683 (1st Dist. April 29, 1999) shall be the facts in this proceeding. The court in that case found that the flight and rack bars do not qualify for the exemption. For the same reasons, the exemption will not be allowed in this case.

Recommendation:

It is recommended that the mantrips be exempt as coal mining equipment. The chemicals, compactors, flight bars, and rack bars are not exempt.

_____
Linda Olivero
Administrative Law Judge

10/18/2000